

SBJ Holdings 1, LLC v. Netflix, Inc. et al

Doc. 1 Att.

DELIVERED THIS 8 DAY OF 8/07
BY John Sallo SCH-1630
PROFESSIONAL CIVIL PROCESS

U.S. AGENT (See 1200 Series for Civil Case)

Issued by the
UNITED STATES DISTRICT COURT

Western District of Texas

SBJ HOLDINGS 1, LLC

SUBPOENA IN A CIVIL CASE

V.
NETFLEX, INC., AMAZON.COM, INC.,
HARVESTANDGROW.COM, LLC, and BODERS
GROUP, INC.

Case Number: 2:07-CV-120-TJW
(U.S.D.C. Eastern - Texas)

TO: Vignette Corporation
1301 S. MoPac Expressway #100
Austin, TX 78746-6947

☐ YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to
testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition (at
the above place).

PLACE OF DEPOSITION

DATE AND TIME

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the
place, date, and time specified below (for documents or objects):

Attachment A

PLACE
Vignette Corporation
1301 S. MoPac Expressway #100
Austin, TX 78746-6947

DATE AND TIME
August 28, 2007

☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below.

PLACES

DATE AND TIME

Any organization not a party to this suit who is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and it shall perform for each person designated, the duties upon which the person will testify.

ISSUED BY: John Sallo DATE: August 28, 2007

SUBPOENA FOR NETFLEX, INC., AMAZON.COM, INC.,
HARVESTANDGROW.COM, LLC, and BODERS GROUP, INC.

DATE: August 28, 2007

Blake C. Kreidler, Esquire & Associates, LLP, P.O. Box 3485, Longview, Texas 75605
(800) 759-8435

(See Rule 17, Federal Rules of Civil Procedure, and Rule 26, Federal Rules of Civil Procedure)

If a party is unable to produce a document, it shall file a motion to quash the subpoena.

AO48 (Rev. 7/2/85) Subpoena in Civil Case

PHOTO SERVICE

DATE _____

PLACE

SEVERED

SERVED ON PRINTWORK

CHAPTER 10

SEARCHED BY DPLNT NAME

THE

DECLARATION OF INTEREST

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

DATE _____

ACKNOWLEDGMENTS

NEW! 911 CHEVY 3.0

Rule 45, Federal Rules of Civil Procedure, Federal Judicial Center, and is amended on December 1, 2005.

(c) PROTECTION OF PERSONS SUBJECT TO SURVEILLANCE

(U) A large part of attorney representation for the defense is the activity of a litigation team which includes attorneys, paralegals, investigators, and other support personnel. The litigation team is responsible for the day-to-day management of the defense. The litigation team is responsible for the day-to-day management of the defense. The litigation team is responsible for the day-to-day management of the defense.

(U) A person convicted of a federal criminal offense involving the use, or attempt of use, of a dangerous weapon, shall be ineligible for appointment, promotion or transfer to a position of greater responsibility in the position of the place of probation or suspension until sentenced to a term of imprisonment, house arrest or jail.

[illegible]

(3) (A) On timely motion, the court by which a response was filed shall
must or modify the response [24]

(4) fails to allow reasonable time for contribution

[illegible]

no exception or waiver is given for

1941. 1942. 1943. 1944. 1945. 1946. 1947. 1948. 1949. 1950. 1951. 1952. 1953. 1954. 1955. 1956. 1957. 1958. 1959. 1960. 1961. 1962. 1963. 1964. 1965. 1966. 1967. 1968. 1969. 1970. 1971. 1972. 1973. 1974. 1975. 1976. 1977. 1978. 1979. 1980. 1981. 1982. 1983. 1984. 1985. 1986. 1987. 1988. 1989. 1990. 1991. 1992. 1993. 1994. 1995. 1996. 1997. 1998. 1999. 2000. 2001. 2002. 2003. 2004. 2005. 2006. 2007. 2008. 2009. 2010. 2011. 2012. 2013. 2014. 2015. 2016. 2017. 2018. 2019. 2020. 2021. 2022. 2023. 2024. 2025. 2026. 2027. 2028. 2029. 2030. 2031. 2032. 2033. 2034. 2035. 2036. 2037. 2038. 2039. 2040. 2041. 2042. 2043. 2044. 2045. 2046. 2047. 2048. 2049. 2050. 2051. 2052. 2053. 2054. 2055. 2056. 2057. 2058. 2059. 2060. 2061. 2062. 2063. 2064. 2065. 2066. 2067. 2068. 2069. 2070. 2071. 2072. 2073. 2074. 2075. 2076. 2077. 2078. 2079. 2080. 2081. 2082. 2083. 2084. 2085. 2086. 2087. 2088. 2089. 2090. 2091. 2092. 2093. 2094. 2095. 2096. 2097. 2098. 2099. 2100. 2101. 2102. 2103. 2104. 2105. 2106. 2107. 2108. 2109. 2110. 2111. 2112. 2113. 2114. 2115. 2116. 2117. 2118. 2119. 2120. 2121. 2122. 2123. 2124. 2125. 2126. 2127. 2128. 2129. 2130. 2131. 2132. 2133. 2134. 2135. 2136. 2137. 2138. 2139. 2140. 2141. 2142. 2143. 2144. 2145. 2146. 2147. 2148. 2149. 2150. 2151. 2152. 2153. 2154. 2155. 2156. 2157. 2158. 2159. 2160. 2161. 2162. 2163. 2164. 2165. 2166. 2167. 2168. 2169. 2170. 2171. 2172. 2173. 2174. 2175. 2176. 2177. 2178. 2179. 2180. 2181. 2182. 2183. 2184. 2185. 2186. 2187. 2188. 2189. 2190. 2191. 2192. 2193. 2194. 2195. 2196. 2197. 2198. 2199. 2200. 2201. 2202. 2203. 2204. 2205. 2206. 2207. 2208. 2209. 2210. 2211. 2212. 2213. 2214. 2215. 2216. 2217. 2218. 2219. 2220. 2221. 2222. 2223. 2224. 2225. 2226. 2227. 2228. 2229. 2230. 2231. 2232. 2233. 2234. 2235. 2236. 2237. 2238. 2239. 2240. 2241. 2242. 2243. 2244. 2245. 2246. 2247. 2248. 2249. 2250. 2251. 2252. 2253. 2254. 2255. 2256. 2257. 2258. 2259. 2260. 2261. 2262. 2263. 2264. 2265. 2266. 2267. 2268. 2269. 2270. 2271. 2272. 2273. 2274. 2275. 2276. 2277. 2278. 2279. 2280. 2281. 2282. 2283. 2284. 2285. 2286. 2287. 2288. 2289. 2290. 2291. 2292. 2293. 2294. 2295. 2296. 2297. 2298. 2299. 2300. 2301. 2302. 2303. 2304. 2305. 2306. 2307. 2308. 2309. 2310. 2311. 2312. 2313. 2314. 2315. 2316. 2317. 2318. 2319. 2320. 2321. 2322. 2323. 2324. 2325. 2326. 2327. 2328. 2329. 2330. 2331. 2332. 2333. 2334. 2335. 2336. 2337. 2338. 2339. 2340. 2341. 2342. 2343. 2344. 2345. 2346. 2347. 2348. 2349. 2350. 2351. 2352. 2353. 2354. 2355. 2356. 2357. 2358. 2359. 2360. 2361. 2362. 2363. 2364. 2365. 2366. 2367. 2368. 2369. 2370. 2371. 2372. 2373. 2374. 2375. 2376. 2377. 2378. 2379. 2380. 2381. 2382. 2383. 2384. 2385. 2386. 2387. 2388. 2389. 2390. 2391. 2392. 2393. 2394. 2395. 2396. 2397. 2398. 2399. 2400. 2401. 2402. 2403. 2404. 2405. 2406. 2407. 2408. 2409. 2410. 2411. 2412. 2413. 2414. 2415. 2416. 2417. 2418. 2419. 2420. 2421. 2422. 2423. 2424. 2425. 2426. 2427. 2428. 2429. 2430. 2431. 2432. 2433. 2434. 2435. 2436. 2437. 2438. 2439. 2440. 2441. 2442. 2443. 2444. 2445. 2446. 2447. 2448. 2449. 2450. 2451. 2452. 2453. 2454. 2455. 2456. 2457. 2458. 2459. 2460. 2461. 2462. 2463. 2464. 2465. 2466. 2467. 2468. 2469. 2470. 2471. 2472. 2473. 2474. 2475. 2476. 2477. 2478. 2479. 2480. 2481. 2482. 2483. 2484. 2485. 2486. 2487. 2488. 2489. 2490. 2491. 2492. 2493. 2494. 2495. 2496. 2497. 2498. 2499. 2500. 2501. 2502. 2503. 2504. 2505. 2506. 2507. 2508. 2509. 2510. 2511. 2512. 2513. 2514. 2515. 2516. 2517. 2518. 2519. 2520. 2521. 2522. 2523. 2524. 2525. 2526. 2527. 2528. 2529. 2530. 2531. 2532. 2533. 2534. 2535. 2536. 2537. 2538. 2539. 2540. 2541. 2542. 2543. 2544. 2545. 2546. 2547. 2548. 2549. 2550. 2551. 2552. 2553. 2554. 2555. 2556. 2557. 2558. 2559. 2560. 2561. 2562. 2563. 2564. 2565. 2566. 2567. 2568. 2569. 2570. 2571. 2572. 2573. 2574. 2575. 2576. 2577. 2578. 2579. 2580. 2581. 2582. 2583. 2584. 2585. 2586. 2587. 2588. 2589. 2590. 2591. 2592. 2593. 2594. 2595. 2596. 2597. 2598. 2599. 2600. 2601. 2602. 2603. 2604. 2605. 2606. 2607. 2608. 2609. 2610. 2611. 2612. 2613. 2614. 2615. 2616. 2617. 2618. 2619. 2620. 2621. 2622. 26

1981-1982

3) Register the name of a large member of the community to help develop it, is confidential information or

(ii) providing disclosure of an individual's identity, location, or information not describing specific events or occurrences, in any form resulting from the experts' study made use of the results of any party.

[illegible]

LO DUTTO IL PRODOTTO SUPERCIERA

It is the responsibility of the contractor to protect commercial products from the effects of the blast waves of nuclear or civil explosives and their debris in accordance with the requirements of the contract.

(b) It is hereby declared that the use of the term "superconducting electronically" means, with respect to a device, comprising of a substance that produces the superconductivity in a given device or which the device contains, is defined as or is a form of the use of the term "superconductivity".

(C) Mergers, according to a different model, will produce the same

1. The Commission has been informed that the above-named company, which is a subsidiary of the American International Corporation, is engaged in the business of selling and distributing various types of goods, including foodstuffs, in the United States. It is stated that the company has been operating for some time and has a good reputation in the market.

2. The Government has the right to require that the information be furnished in a form and manner that is consistent with the public interest, and that the information be furnished in a form and manner that is consistent with the public interest.

[illegible][illegible]

ATTACHMENT A TO SUBPOENA TO VIGNETTE CORPORATION

DEFINITIONS

A. "VIGNETTE," "YOU" and "YOUR" as used herein, means Vignette Corporation and any parent entities, subsidiaries, divisions, affiliates, branches, wholly or partly owned entities of VIGNETTE, any and all predecessors and successors thereof, and any entities acting or purporting to act for or on behalf of, or who are subject to the direction or control of, any of the foregoing entities, including agents, employees, officers, directors, attorneys, consultants, contractors, subcontractors and representatives.

B. "SBJ" as used herein, means the named plaintiff SBJ HOLDINGS 1, LLC, and any parent entities, subsidiaries, divisions, affiliates, branches, wholly or partly owned entities of SBJ, any and all predecessors and successors thereof, and any entities acting or purporting to act for or on behalf of, or who are subject to the direction or control of, any of the foregoing entities, including agents, employees, officers, directors, attorneys, consultants, contractors, subcontractors and representatives.

C. "NETFLIX" as used herein, means one of the named defendants Netflix, Inc., and any parent entities, subsidiaries, divisions, affiliates, branches, wholly or partly owned entities of NETFLIX, any and all predecessors and successors thereof, and any entities acting or purporting to act for or on behalf of, or who are subject to the direction or control of, any of the foregoing entities, including agents, employees, officers, directors, attorneys, consultants, contractors, subcontractors and representatives.

D. "AMAZON" as used herein, means one of the named defendants Amazon.com, Inc., and any parent entities, subsidiaries, divisions, affiliates, branches, wholly or partly owned entities of AMAZON, any and all predecessors and successors thereof, and any entities acting or purporting to act for or on behalf of, or who are subject to the direction or control of, any of the foregoing entities, including agents, employees, officers, directors, attorneys, consultants, contractors, subcontractors and representatives.

E. "BORDERS" as used herein, means one of the named defendants Borders Group,

1 Inc., any parent entities, subsidiaries, divisions, affiliates, branches, wholly or partly owned
2 entities of BORDERS, any and all predecessors and successors thereof, and any entities acting or
3 purporting to act for or on behalf of, or who are subject to the direction or control of, any of the
4 foregoing entities, including agents, employees, officers, directors, attorneys, consultants,
5 contractors, subcontractors and representatives.

6 F. "PATENT-IN-SUIT" as used herein, means U.S. Patent No. 6,330,592, titled
7 "Method, Memory, Product, and Code for Displaying Pre-Customized Content Associated with
8 Visitor Data," dated December 11, 2001.

9 G. "PATENT SUBJECT MATTER" as used herein, means any method, program(s),
10 application, use, product, or code for displaying pre-customized content associated with user
11 visitor data.

12 H. "INVENTORS" as used herein, means the inventors listed on the PATENT-IN-
13 SUIT, Michael K. Makuch and Neil Webber.

14 I. "STORYSERVER" as used herein means YOUR STORYSERVER software
15 product, including all versions and derivatives thereof.

16 J. "Documents" shall mean the original and all non-identical copies of any written,
17 typed, printed, photocopied, photographic, machine-readable, magnetically or optically recorded
18 matter of any kind, or electronically stored information, including, but not limited to, letters,
19 envelopes, forms, affidavits, correspondence, telegraphs, telecopies, telefaxes, paper
20 communications, electronic communications, signed statements, tabulations, charts, memoranda,
21 checks, appointment books, records, proposals, memoranda or other transcriptions by mechanical
22 device, by longhand or shorthand recording, tape recorded or by electronic or any other means,
23 computer-generated information, computer software, computer programs, computer code, intra-
24 office communications, interoffice communications, all summaries of oral communications,
25 telephonic or otherwise, microfiche, microfilm, lists, bulletins, calendars, circulars, desk pads,
26 opinions, ledgers, minutes, agreements, journals, diaries, contracts, invoices, balance sheets,
27 telephone messages or other messages, magazines, pamphlets, articles, notices, newspapers,
28 studies, summaries, worksheets, telexes, cables and all other graphic materials, writings and

1 instruments, however produced or reproduced. A document includes all documents appended
2 thereto.

3 K. "Communications" shall refer to all written, oral, telephonic or other inquiries,
4 dialogues, discussions, conversations, interviews, correspondence, consultations, negotiations,
5 agreements, understandings, meetings, letters, notes, telegrams, advertisements, computer mail, e-
6 mail and all other documents evidencing any verbal or nonverbal interaction between persons and
7 entities.

8 L. The terms "relating to" or "relate to" shall mean concerning, showing,
9 demonstrating, comprising, citing, quoting, regarding, involving, representing, evidencing,
10 constituting, discussing, mentioning, containing, analyzing, supporting, embodying, reflecting,
11 identifying, incorporating, describing, commenting on, referring to, considering, recommending,
12 dealing with or pertaining to in whole or in part.

13 M. The terms "or" and "and" shall be read in the conjunctive and in the disjunctive
14 wherever they appear, and neither of these words shall be interpreted to limit the scope of these
15 Requests.

16 N. The singular form of any word shall be deemed to include the plural. The plural
17 form of any word shall be deemed to include the singular.

18 O. The term "this ACTION" shall refer to *SBJ Holdings I, LLC v. Netflix, Inc., et*
19 *al.*, United States District Court, Eastern District of Texas, Civil Action No. 2:07-cv-120-TJW.

20 **INSTRUCTIONS**

21 A. In responding to the following requests, furnish all available documents, including
22 documents in the possession, custody, or control of any of YOUR directors, officers, agents,
23 employees, representatives, associates, investigators or division affiliates, partnerships, parents or
24 subsidiaries, and persons under YOUR control, as well as documents which YOU have a legal
25 right to obtain, not merely documents in the direct possession of VIGNETTE. If you cannot fully
26 respond to the following requests after exercising due diligence to secure the documents
27 requested thereby, so state, and specify the portion of each request that cannot be responded to
28 fully and completely. In the latter event, state what efforts were made to obtain the requested
ATTACHMENT A TO SUBPOENA TO
VIGNETTE

Civil Action No. 2:07-cv-120-TJW

1 documents.

2 B. If YOU object to any portion of any request for production of documents, please
3 provide all documents responsive to the portion of the request to which it does not object as soon
4 as possible.

5 C. Electronic records and computerized information must be produced in native
6 format, together with a description of the system from which they were derived sufficient to
7 permit rendering the records and information intelligible.

8 D. Selection of documents from the files and other sources and the numbering of such
9 documents shall be performed in such a manner as to ensure that the source of each document
10 may be determined, if necessary.

11 E. File folders with tabs or labels or directories of files identifying documents called
12 for by these requests must be produced intact with such documents.

13 F. Documents attached to each other shall not be separated.

14 G. If YOU assert that certain documents or things are privileged, please identify:

- 15 1. The nature of the privilege;
16 2. The author(s) of the documents;
17 3. All recipients of the documents;
18 4. The date the document was created;
19 5. The subject matter to which the document pertains; and
20 6. All persons with access to the documents.

21 H. The requests contained herein are intended to be continuing in nature so as to
22 require supplementation promptly following the discovery of additional responsive information.

23 I. If any request is unclear or ambiguous, please do not delay, but contact counsel for
24 Netflix, Amazon, and Borders, immediately for clarification.

25 J. If YOU consider any documents that YOU are producing to be confidential or
26 highly confidential, please designate them accordingly and such documents will be handled
27 pursuant Patent Local Rule 2-2 of the Eastern District of Texas until entry of a Protective Order.

28 ATTACHMENT A TO SUBPOENA TO
VIGNETTE

Civil Action No. 2:07-cv-120-TJW

REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS

1. All documents relating to the research, design, development, implementation, operation, evaluation, or testing of STORYSERVER or the PATENT SUBJECT MATTER prior to December 5, 1998, including but not limited to specifications, user manuals, programmer guides, demonstrations, application notes, operating handbooks, operating instructions, datasheets, diagrams, schematics, software, firmware, source code, object code, executable code, software language references, test plans, test procedures, test results, test documents, documents related to shared development projects, press releases, product roadmaps, white papers, marketing collateral, and related communications such as email and memoranda.

2. Documents sufficient to evidence each discussion with, or disclosure to, or other manner of providing to a third party, or sale/license of, offer to sell/license, or other prospective or actual commercialization of, the STORYSERVER product or the PATENT SUBJECT MATTER prior to December 5, 1998, including but not limited to contracts, purchase orders, invoices, advertisements, marketing materials, offer letters, beta testing agreements, and third party or joint development agreements.

3. All documents and communications relating to the PATENT-IN-SUIT, including but not limited to patent applications, opinions, summaries, descriptions, analysis, notes, notebooks, valuations, drafts, prior art searches, assignments, mortgages, transfers, agreements, licenses, or offers to license.

4. All documents and communications referring or relating to SBJ, NETFLIX, AMAZON or BORDERS.

5. All documents and communications relating to this ACTION, including but not limited documents relating to YOUR interest in this ACTION.